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## **COMMUNITY DEVELOPMENT DEPARTMENT**

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### **PLANNING COMMISSION MEETING MINUTES**

#### **REGULAR MEETING**

**SEPTEMBER 28, 2010**

**PRESENT:** Mueller, Moniz, Tanda, Escobar, Koepp-Baker, Benich

**ABSENT:** None

**LATE:** None

**STAFF:** Senior Planner (SP) Linder, Senior Planner (SP) Tolentino, and  
Development Services Technician (DST) Bassett

Chair Mueller called the meeting to order at 6:59 p.m., inviting all present to join in reciting the pledge of allegiance to the U.S. flag. Mueller announced that Robert Benich was newly appointed as a Planning Commissioner and that Commissioner John Liegl resigned, leaving one post still vacant.

#### **DECLARATION OF POSTING OF AGENDA**

Development Services Technician Bassett certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

#### **OPPORTUNITY FOR PUBLIC COMMENT**

Chair Mueller opened, and then closed, the floor to public comment for matters not appearing on the agenda as none were in attendance indicating a wish to address such matters.

#### **MINUTES:**

**August 10, 2010**

**COMMISSIONERS KOEPP-BAKER AND TANDA MOTIONED TO APPROVE THE AUGUST 10, 2010 MINUTES.**

**THE MOTION PASSED (3-0-2-0) WITH THE FOLLOWING VOTE: AYES: UNANIMOUS; NOES: NONE; ABSTAIN: ESCOBAR, BENICH; ABSENT: NONE.**

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**August 24, 2010**      **COMMISSIONERS ESCOBAR AND KOEPP-BAKER MOTIONED TO APPROVE THE AUGUST 24, 2010 MINUTES.**

**THE MOTION PASSED (4-0-1-0) WITH THE FOLLOWING VOTE: AYES: UNANIMOUS; NOES: NONE; ABSTAIN: BENICH; ABSENT: NONE.**

**ORDERS OF THE DAY**      No changes.

**PUBLIC HEARINGS:**

**1) USE PERMIT, UP-10-06: CAPUTO-SATELLITE**      A request for approval of a conditional use permit to establish a 6,326 sq. ft. kidney dialysis center within an existing light industrial building located at 16060 Caputo Drive. (APN 817-29-007)

**HEALTHCARE:**      Linder presented her staff report.

Tanda: Should the table on page 3 say 20 driving patients, rather than 10?

Linder: Yes.

Tanda: Since the parking is exactly the amount needed, if they go over the number provided, how do you enforce that?

Linder: We usually wait to hear if there are complaints from the neighboring tenants. If it is brought to our attention, the user could be required to come back and make amendments to the Use Permit.

Mueller: For the record, Lana's Dance Studio applied for the original Use Permit. Lana's has since moved out and now Morgan Hill Dance is in the space.

Mueller opened the floor to public comment.

Frank Hagaman appeared on behalf of the applicant.

Hagaman: This is a 16-station facility with one isolation room, so we would never have 17 patients at a time. The patients' arrival time is staggered, so the parking is also staggered. At least 70 percent of our patients are delivered by van, and probably more like 90 percent. Satellite Healthcare is a non-profit organization that has been in operation for 35 years. Satellite Healthcare is to help patients so that they don't have to go to the hospital for treatment. ESRD is the only disease where you report to the federal government and it is tracked by location. Morgan Hill has no dialysis center, so patients have to travel to Gilroy or to San Jose. Gilroy runs its facility from 5:00 a.m. until almost 10:00 p.m. to handle the load. We strategically picked this location to serve this community. Patients with this disease have to show up for treatment at least three days a week, four hours per session, so their lives are drastically altered. When they do go out, they need the location to be near stores and other conveniences.

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Koepp-Baker: I visited this site on Saturday. One question I have is if the vans that deliver the patients belong to Satellite Healthcare?

Hagaman: No, we have a contract with a paratransit company.

Koepp-Baker: Do the vans stay during the treatment?

Hagaman: No, they leave and then come back.

Koepp-Baker: When is the medical waste dealt with?

Hagaman: Strictly during business hours.

Tanda: What does ESRD stand for?

Hagaman: End Stage Renal Dialysis.

Scott Schilling, one of the owners of the building, appeared.

Schilling: From the beginning when Lana's Dance studio came in, the parking impact has been less than anticipated, mostly because their hours are from 3:30 p.m. and later. To my knowledge, we have never had to use offsite parking. I am in Suite 120 and there are only 2 ½ people in the office. The machine shop is in the process of moving out. We do not feel that parking will be a problem, but as an owner I will be there to deal with it.

Mueller: When do you anticipate opening Satellite Healthcare?

Hagaman: From the time we get the permit for the tenant improvement, it is another 13 to 14 weeks. It then has to be inspected and licensed by the Department of Health Services, and that could take another 30 days to 120 days.

Koepp-Baker: You spoke of Gilroy running until late at night. Do you anticipate your hours going longer in the future, and so should we address that now, so you don't have to come back and amend the Use Permit?

Hagaman: This disease is growing at 7 percent per year, but we probably would not get to a fourth shift until 18 to 24 months from now. In some cases, we have a nocturnal program. It's not an overnight stay, it's just an extended treatment program, but at some later point, we would probably have to come back and amend the use permit for additional hours.

Mueller: If we extend the Use Permit hours now, you don't have to utilize those hours yet. They would just be available to you when you're ready. If staff doesn't have an issue with the hours, we could make that adjustment.

Linder: Offhand, I don't see that as an issue, since it would not be during peak hours.

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Mueller: What would be the hours of the nocturnal program?

Barbara Svendsen appeared on behalf of the applicant.

Svendsen: The nocturnal program would be three nights a week and would run all night. But those patients are gone before the morning patients come on.

Benich: It's basically a 24 hour program on those days?

Svendsen: Yes.

Mueller: So the staff would come in around 7:00 pm on Sunday and would effectively be there almost 24 hours per day until Saturday evening?

Linder: If we just state a 24-hour facility, seven days a week, then they can pick what days they want to provide nocturnal treatment. I would be comfortable with that.

Mueller: Closed the floor to public comment.

Benich: 1) Considering that most of the patients don't drive, I don't think parking is going to be an issue. 2) I would have no problem with them operating 24/7.

Koepp-Baker: I have no problem with it being a 24-hour facility.

Tanda: I have no problem with the facility been 24 hours, 7 days a week, as long as there are no security issues in the parking lot at night.

**COMMISSIONERS ESCOBAR AND KOEPP-BAKER MOTIONED TO APPROVE THE CONDITIONAL USE PERMIT WITH MODIFICATIONS FOR ADDITIONAL PARKING IF NEEDED AND FOR OPERATIONS TO BE 24 HOURS, 7 DAYS A WEEK (SECTION 4 CONDITIONS D AND E) AND THE RESOLUTION BE AMENDED TO READ *SEPTEMBER 28<sup>TH</sup>*.**

**THE MOTION PASSED (6-0-0-0) WITH THE FOLLOWING VOTE:  
AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

**2) DEVELOPMENT  
AGREEMENT  
AMENDMENT,  
DAA-06-06D:  
MONTEREY-  
GUNTER:**

The applicant is requesting approval to amend the project development agreement for a mixed use development located at 17620 Monterey Road to allow for an additional 24 months to commence construction of 15 residential units. The development agreement amendment would also re-incorporate the development schedule in Exhibit B and modify Paragraph 18 to allow for a streamlined process for future amendment requests. The project site is one acre in size and is located in the CC-R, Central Commercial-Residential zoning district (APN 726-23-008).

Tolentino presented her staff report and stated that the applicant is requesting a two-year extension.

Moniz: This remediation process has been going on for five years, and it's

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expected to go another two?

Tolentino: The new company has to reevaluate what has been done so far, and it's almost like starting from scratch. So it's two years from the date of the contract.

Tanda: Why was E. Dunne-Kruse given such a long extension, until 2013?

Tolentino: They have biological (endangered species) issues, and they can't complete their environmental studies until they get a certain amount of rain for two consecutive years.

Tanda: Why was E. Main-Thrust extended out until 2013?

Linder: Initially, there were some environmental issues that have since been cleared up. Also, it was acquired by the current owner fairly late, so they needed more time.

Mueller opened the floor to public comment.

Craig Van Keulen, one of the owners, appeared on behalf of the project.

Van Keulen: We discovered a couple of years into the contract that the company doing the remediation front-loaded their contract. The remediation company reached the 75 percent milestone for the contract and collected 75 percent of the money. However, the cost to complete the remediation exceeded the 25 percent of the money remaining. They did this with the intent of renegotiating their contract for more money. Then we had to go through the process with the state and get a new company. It was then that we found out the equipment installed by the original remediation company had been put in the wrong place and had to be moved. Like other projects, we're dealing with economic difficulties, as well. We have obtained a permit for the commercial building shell but we can't get funding while the site is contaminated.

Mueller: What is the source of the contamination?

Van Keulen: An underground gas tank.

Benich: Removing a tank shouldn't take this long.

Van Keulen: The tank is already gone, but it actually contaminated the water in the aquifer. That is what has to be remediated. Also, the initial monitoring wells were placed on the inside of the plume rather than the outside, and that was the wrong place. New studies have to be performed and the wells moved.

Benich: Have there been changes in government regulations related to remediation during the time in question?

Van Keulen: I don't know of any specifically, but I think the levels of remediation have increased. Due to the lack of staffing on the state level, it has also slowed the process, not just because physical requirements have changed.

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Tanda: Is the original property owner liable to help with any of the cost of the clean-up?

Van Keulen: I don't know if that's the case or not, but we're not looking to them for help.

Ben Fuller appeared on behalf of the applicant.

Fuller: The one thing that has affected us is the slowdown in the state's ability to pay for the remediation because of a lack of staffing and funding.

Van Keulen: The state has now moved to a "time and materials" method of paying the remediation contractors, due to the problems that arose with the previous "pay for performance" contracts.

Tanda: I thought that as the current owner you were paying for the remediation, but it sounds like you are in a program with the state that pays for it?

Van Keulen: The state is paying for it, so we have to follow their exact requirements and that takes time and is a complex process. We are supplementing where necessary.

Mueller closed the floor to public hearing.

**COMMISSIONERS MONIZ AND KOEPP-BAKER MOTIONED TO APPROVE PROPOSED RESOLUTION A RECOMMENDING COUNCIL APPROVAL OF THE DEVELOPMENT AGREEMENT AMENDMENT, INCLUDING THE EXTENSION OF TIME**

Benich: I am concerned about the time. The state doesn't even have a balanced budget. If the checks are coming from them, this could take more than 24 months.

Tanda: What could be done now that wouldn't require a loan?

Tolentino: The applicant is devoting all their resources towards remediation.

Mueller: The applicant could actually proceed with the commercial part of the building, if it weren't for this remediation process.

Benich: What would be the results if this isn't remediated in 24 months?

Tolentino: The applicant could apply for another extension. They are also considering applying for a whole new project under Measure C with 20 residential units, which would have new development deadlines; or they could apply for additional units under the existing Measure C application. The process is yet to be determined.

**THE MOTION PASSED (6-0-0-0) WITH THE FOLLOWING VOTE:  
AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

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**3) SUBDIVISION**  
**AMENDMENT,**  
**SDA-04-13B /**  
**ZONING**  
**APPROVAL**  
**AMENDMENT,**  
**ZAA-04-16B:**  
**BARRETT-**  
**ODISHOO:**

A request to amend the currently approved precise development plan and subdivision approval for the Villas of San Marcos project located on the southwest corner of the intersection of Barrett Avenue and San Ramon Drive. The requested amendment to the subdivision would alter lot sizes and the requested amendment to the precise development plan would incorporate five additional units into the project master plan. (APN 817-33-089)

Linder presented her staff report.

Benich: I'm confused by the half-acre remainder parcel. Would that be above and beyond the five units they're asking for?

Linder: No, that would be for the five. But they would have to come in and compete for those lots in the RDCS competition.

Benich: If the lot coverage was at 29 percent before the reconfiguration, but the lot sizes are shrinking, how can the lot coverage be at 26 percent now?

Linder: They decreased the park area and decreased the unit sizes.

Mueller called for a break at 8:00 and reconvened at 8:07.

Mueller opened the floor to public comment.

Scott Zazueta of D&Z Design Associates appeared on behalf of the applicant.

Zazueta: We have found that buyers in the current market are not interested in the larger 3,000 sq foot homes. They also want more yard space. We have reacted to that. We have also increased all of the models to four bedrooms. Overall, we feel we have improved the project.

Mueller: What do you estimate the sales price of the units will be?

Zazueta: Between \$650,000 and \$700,000.

Doug Zuercher, a homeowner in the Villas of San Marcos subdivision, appeared.

Zuercher: I am here to represent the homeowners association (HOA). The HOA got off to a rough start. We just learned about the changes to the park and this is a surprise to us. We did not receive notice in enough time to look at this. We would like to oppose this or have it postponed until we have time to look at the redesign more closely.

Benich: Does the HOA own the park?

Zuercher: We believe that we do now, but it has taken a lot of effort on the part of the homeowners to accomplish that. Prior to April of this year, the HOA was in the name of the lender. As homeowners, we had to pursue getting the HOA set up. We would just like to have time to have a discussion with the developer to discuss the

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changes to the park, especially if the HOA owns it. We don't understand right now who owns that park.

Mike Dunn, one of the owners, appeared.

Mueller: It sounds like there is a communication issue with the Homeowners' Association.

Dunn: The area he is talking about is mostly the retention pond. The park is already in place.

Mueller: Is it part of the common parcel that the homeowners will have to maintain?

Dunn: Yes.

Moniz: Are you proposing a separate HOA for the new units?

Dunn: No, they will all be part of the same HOA.

Moniz: And you didn't consult with the owners of the existing units?

Dunn: No.

Dave Nickens, the owner of the first home, appeared.

Nickens: When I was sold the house, I was given a different vision of what would happen. That has already changed. I am just concerned that there is a lot of change from what I was originally told. I would like to know if adding these five houses is going to increase or decrease the quality of my home.

Moniz: That depends on the price of the new homes. But you'll have a deeper rear yard behind you.

Octavio Hurtado, of Hanna & Burnett Engineers, appeared.

Hurtado: The portion of the park that is going to be reduced in size is the retention pond. That is being accomplished by putting in an underground storage pipe. The actual storage capacity remains the same. Also, the Butterfield Channel is supposed to be extended at some point.

Linder: The extension of the Butterfield Channel will provide additional capacity that this project could take advantage of in the future.

Hurtado: At that point the retention basin could be eliminated, in theory. And then the space could be dedicated to the homeowners.

Moniz: What is the change in the open space?

Linder: The change is .19 acres.



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Moniz: What is the change in square footage?

Hurtado: It was proposed at 61,730 square feet and now it is proposed at 53,707.

Moniz: So that is approximately 2 lots. Where did that go?

Linder: The road was straightened out and that changed the size of the retention pond. The park does not change.

Moniz: The change in open space does not mean a change to the existing amenities.

Zuercher: The HOA has budgeted for a greenbelt. We have assumed that this section which is a retention pond is the greenbelt. So there is an obvious discrepancy.

Mueller: Does the city allow underground storage of water?

Linder: Yes, we have two existing residential projects and some commercial projects, particularly along Condit.

Mueller: I am going to suggest that this be continued to allow the homeowners and the builder time to meet and communicate.

Mueller closed the floor to public comment.

**COMMISSIONERS ESCOBAR AND KOEPP-BAKER MOTIONED TO  
CONTINUE AGENDA ITEM NO. 3 TO OCT. 12.**

**THE MOTION PASSED (6-0-0-0) WITH THE FOLLOWING VOTE:  
AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

**ANNOUNCEMENTS/  
COMMISSIONER  
IDENTIFIED ISSUES**

City Council approved the amendment to the General Plan to allow for the single family high land use designation as well as the R-1 4,500 zoning designation. The Council was very complimentary of the Planning Commission and appreciative of their time and efforts in this process.

**CITY COUNCIL  
REPORTS**

None.

**ADJOURNMENT**

Noting that there was no further business for the Planning Commission at this meeting, Chair Mueller adjourned the meeting at 8:25p.m.

**MINUTES RECORDED AND TRANSCRIBED BY:**

**ELIZABETH BASSETT, Development Services Technician**